



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of the Estate of Robert
Levin, Office of Legislative Services

Administrative Appeal

CSC Docket No. 2019-1952

ISSUED: April 1, 2019 (SLD)

Karen Levin, wife of Robert Levin, former Section Chief, Office of Legislative Services with the Office of Legislative Services (OLS), appeals the denial of the request for Mr. Levin’s Supplemental Compensation on Retirement (SCOR).

By way of background, the appointing authority submitted a request for SCOR on behalf of Mr. Levin to this agency, indicating that he died May 15, 2018 and that his retirement was to be effective October 31, 2018. The request was denied pursuant to *N.J.A.C. 4A:6-3.1(b)4* which provides that employees who elect deferred retirement, or whose separation from employment is not based on retirement, shall not be eligible for SCOR.

On appeal, Mrs. Levin argues that Mr. Levin was a dedicated public servant who worked tirelessly for decades. She argues that he felt that it was his duty to work during his illness, despite having sufficient sick time, and that his commitment should not be punished. Moreover, she maintains that they were advised by this agency, the OLS, the district offices of multiple legislators and other State officials that as long as Mr. Levin had his retirement papers in place at the time of his death, she would be eligible to collect his unused sick time as if he were alive on the date of his retirement. Finally, Mrs. Levin argues that the denial of the SCOR payment is “manifestly unjust” as the decision to pay or not is “discretionary” and there are no “precedential determinations.”

In support, the appointing authority argues that Mr. Levin filed for retirement on October 3, 2017, with an effective date of November 1, 2018. It maintains that Mr. Levin continued to work with the “assistance of [Mrs.] Levin,” despite receiving treatment for his illness. The appointing authority notes that the Public Employees Retirement System approved Mr. Levin’s retirement in October 2018, despite the fact that Mr. Levin had passed away on May 15, 2018. It argues that since PERS approved his retirement, despite his death, pursuant to *N.J.S.A. 43:15A-50* (a Chapter 221 retirement), the Civil Service Commission (Commission) could interpret the word “retirement” in *N.J.S.A. 11A:6-16*, *et seq.*, to include such retirements. Moreover, the appointing authority argues that *N.J.S.A. 11A:6-19*, which provides that if an employee dies after the effective date of retirement but before payment is made, payment shall be made to the employee’s estate, was last amended in 1986 and does not address the Chapter 221 retirements which were granted under the 1995 law. The appointing authority maintains that although it is not asking the Commission to reverse its longstanding position on SCOR in every case, it believes that for reasons of equity, the Commission should relax the regulation in this matter. Specifically, the appointing authority contends that Mr. Levin’s ability to work during his treatment was facilitated by Mrs. Levin who accompanied him to work. If the Commission, does not relax the regulations to allow the payment of Mr. Levin’s SCOR payment, it would lead to unfair result.

CONCLUSION

N.J.S.A. 11A:6-16 provides, in pertinent part, that:

State employees in the . . . unclassified services who have been granted sick leave under terms and conditions similar to career service employees, shall be entitled upon retirement from a State-administered retirement system to receive a lump sum payment as supplemental compensation for each full day of accumulated sick leave which is credited on the effective date of retirement.

See also, N.J.A.C. 4A:6-3.1(a)2. Additionally, *N.J.S.A. 11A:6-18* and *N.J.A.C. 4A:6-3.1(b)4* provide that an employee who elects deferred retirement, or whose separation from employment is not based on retirement, is not eligible for SCOR. *N.J.S.A. 11A:6-19* provides, in pertinent part, that “[i]f an employee dies after the effective date of retirement but before payment is made, payment shall be made to the employee’s estate.” Therefore, an employee’s eligibility for SCOR is statutorily expressly conditioned on direct retirement from a State-administered retirement system. *See In the Matter of Theodore A. Winard* (MSB, decided April 18, 1995). Moreover, SCOR does not contemplate payment for employees who are separated from State employment in another manner. *See In the Matter of Lois Close* (CSC, decided June 4, 2014) (Commission denied the payment of SCOR to the estate as her separation from employment was due to death and she had not filed for

retirement, despite indicating that she was going to file); *In the Matter of Charles Cable* (Commissioner of Personnel, decided October 7, 1997), *aff'd*, A-1637-97T1 (App. Div. March 22, 1999) (Employee who retired more than two years after he was laid off due to inability to find another job was not eligible for SCOR benefits).

In the instant matter, Mrs. Levin and the appointing authority acknowledge that Mr. Levin's separation from State service was not due to retirement as the effective date of Mr. Levin's retirement was in October 2018, several months after he had already passed away. The appointing authority argues that for reasons of equity the Commission should interpret "retired" to include those retirements approved by PERS under Chapter 221. Specifically, it argues that Chapter 221 was written in 1995, 10 years after *N.J.S.A. 11A:6-19*, which has not been amended and thus, it would be fair to include Chapter 221 retirements in the Commission's interpretation. While the Commission is sympathetic to Mrs. Levin and to her situation, SCOR is only available to employees who have left State service due to retirement. *N.J.S.A. 11A:6-18* and *N.J.A.C. 4A:6-3.1(b)4* are clear that when the separation from employment is not due to retirement, or due to a deferred retirement, an employee is not entitled to a SCOR payment. Moreover, as this provision is statutory, it may not be relaxed. In this regard, had the legislature intended for Chapter 221 retirements to be exempt from this statutory provision, it could have amended *N.J.S.A. 11A:6-18* after the enactment of such retirements. Further, *N.J.S.A. 11A:6-19* provides, in pertinent part that "[i]f an employee dies after the effective date of retirement but before payment is made, payment shall be made to the employee's estate." However, none of the associated statutory or regulatory provisions provide for payment when an employee dies prior to a retirement effective date. Finally, with regard to the Mrs. Levin's claim that she was assured by multiple individuals that the SCOR would be paid as long as Mr. Levin had filed for his retirement, while unfortunate, no vested or other rights are accorded by an administrative error. *See Cipriano v. Department of Civil Service*, 151 *N.J. Super.* 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 *N.J.* 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 *N.J. Super.* 538 (App. Div. 1998). Consequently, as Mr. Levin's separation from employment was not due to his retirement, his estate is not entitled to SCOR.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF MARCH, 2019



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